

E-125/CG-92-1345 ORDER DENYING MOTION TO SUPPLEMENT THE RECORD
AND REQUIRING FURTHER FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
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Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint
of Minnesota Windpower, Inc.
Against Lyon-Lincoln Electric
Cooperative, Inc.

ISSUE DATE: May 21, 1993

DOCKET NO. E-125/CG-92-1345

ORDER DENYING MOTION TO
SUPPLEMENT THE RECORD AND
REQUIRING FURTHER FILINGS

PROCEDURAL HISTORY

On November 24, 1992, Minnesota Windpower, Inc. (Minnesota Windpower or the Complainant) filed a complaint against Lyon-Lincoln Electric Cooperative, Inc. (the Co-op or the Respondent). The complaint alleged improprieties in the Co-op's application of setback requirements to wind-driven generating facilities.

On December 15, 1992, the Co-op filed its answer to the complaint.

On December 28, 1992, the Department of Public Service (the Department) filed comments.

On January 13, 1993, Minnesota Windpower filed a reply.

On February 24, 1993, Minnesota Windpower filed a motion to supplement the record. The Complainant requested that the Commission accept into evidence six photographs purporting to show towers and other structures within the Co-op's service area.

The matter came before the Commission for consideration on May 6, 1993.

FINDINGS AND CONCLUSIONS

I. Factual History

Minnesota Windpower and the Co-op agree that Minnesota Windpower requested interconnection with the Co-op's facilities on July 20, 1992. Minnesota Windpower estimated a completion date for its wind machine of August 12, 1992. The parties also agree

that the Co-op forwarded a contract to Minnesota Windpower for completion and signature on August 11, 1992. According to the Co-op, the informational packet which was sent with the contract stated that the Co-op had a 1.5 times height setback requirement. Minnesota Windpower's attorney stated that if the packet contained an explanation of the setback requirement, his client "did not read it."

The Co-op states that it measured the distance from the Complainant's wind machine to the Co-op's power lines on August 17, 1992. The Complainant does not dispute that the distance between the two entities is 90 feet. The Complainant also does not dispute that the height of the combined tower, generator and wind turbine is 118 feet.

The Co-op submitted a copy of a letter it sent to the Complainant on August 20, 1992. The letter states that the Co-op's fallback requirement of 1.5 times the total tower height of 118 feet would mean that a minimum of 177 feet must be maintained between the wind generator and the Co-op's lines. The Co-op's letter states that the Complainant's actual setback of 90 feet results in a violation of the Co-op's setback requirements.

Minnesota Windpower and the Co-op agree that on September 18, 1992, the Complainant asked the Co-op to revoke its setback requirement.

Minnesota Windpower states that it interconnected with the Co-op's facility on October 9, 1992. The Co-op does not dispute that the Complainant is now connected with the Co-op's facility, although the Co-op is not metering the energy generated.

Minnesota Windpower and the Co-op agree that the Co-op informed the Complainant by letter dated October 22, 1992 that the Co-op intends to enforce its setback requirement and will not interconnect with the Complainant's wind generator.

II. Minnesota Windpower's Complaint

Minnesota Windpower's complaint alleges three improprieties in the Co-op's setback requirement as applied to wind generating facilities. The complaint states that the Co-op's requirement:

1. Constitutes an attempted zoning regulation which is outside of the Co-op's authority as an electric cooperative under Minnesota law;
2. Is an excessive and unnecessary technical requirement; and
3. Is inapplicable to other structures which pose a greater safety hazard to its facilities and therefore unlawfully discriminates against the Complainant solely because of its status as the owner of a qualifying facility.

The Complainant requested the following relief:

1. That the Commission find the setback requirement constitutes an unlawful and discriminatory regulation of the Complainant as the owner of a qualifying facility;
2. That the Commission prohibit the Respondent from disconnecting the Complainant's service;
3. That the Commission order the Respondent to interconnect with the Complainant's facility according to the terms set forth in the standard contract;
4. That the Commission order the Respondent to make reparation for energy generated by the Complainant from the date of interconnection on October 9, 1992; and
5. That the Commission order the Co-op to pay the Complainant's reasonable costs, disbursements, and attorneys' fees.

III. Relevant Rules

Minn. Rules, part 7835.4800 sets out certain requirements for utility interconnection with qualifying facilities and for utility specifications in its contracts with interconnecting qualifying facilities.

7835.4800 DENIAL OF INTERCONNECTION APPLICATION

Except as hereinafter provided, a utility must interconnect with a qualifying facility that offers to make energy or capacity available to the utility. The utility may refuse to interconnect a qualifying facility with its power system until the qualifying facility has properly applied under part 7835.2900 and has received approval from the utility. The utility must withhold approval only for failure to comply with applicable utility rules not prohibited by this chapter or governmental rules or laws. The utility must be permitted to include in its contract reasonable technical connection and operating specifications for the qualifying facility.

Minn. Rules, part 7835.5800 gives qualifying facilities the right to appeal if they feel that the utility is being unreasonable in the specifications it is imposing.

7835.5800 RIGHT OF APPEAL FOR EXCESSIVE TECHNICAL REQUIREMENTS

The qualifying facility has the right of appeal to the commission when it considers individual technical requirements excessive.

IV. Commission Action

The facts presented by the parties and the governing rules indicate that three basic issues remain unresolved between the Complainant and the Respondent:

1. Is it reasonable for the Co-op to have a setback requirement as a technical connection or operating specification?
2. If it is reasonable for the Co-op to have a setback requirement as a technical connection or operating specification, what is a reasonable formula for the setback requirement?
3. If the Co-op's formula for a setback requirement is found to be reasonable, is the Co-op acting in a discriminatory fashion in its application of the requirement to Minnesota Windpower as a wind generated qualifying facility?

At this time, the Commission has insufficient information to decide upon the merits of the parties' contested issues. The Commission will not order a contested case hearing because the facts in dispute are relatively few and the amount of money in controversy is not great. The Commission will instead require the parties to submit affidavits answering the above-enumerated questions. This information will allow the Commission to decide whether to grant or to deny the relief sought by the Complainant. At that time the Commission will decide if the Complainant is a prevailing party for the purpose of awarding attorneys' fees under Minn. Rules, part 7835.4550.

V. Minnesota Windpower's Motion to Supplement the Record

Minnesota Windpower moved to allow into the record six photographs of structures purportedly similar to the Complainant's wind machine. The photographs were meant to prove that similar structures were being held to a less stringent setback requirement by the Co-op.

The Commission will not allow the photographs into the record at this time. The Commission will, however, allow the photographs to be resubmitted along with the Complainant's affidavits. The Commission expects that the affidavits will identify the structures, their location, and any pertinent information regarding their setback from the Co-op's lines.

ORDER

1. Within 30 days from the date of this Order, the parties shall submit affidavits answering the following questions:

- a. Is it reasonable for the Co-op to have a setback requirement as a technical connection or operating specification?
 - b. If it is reasonable for the Co-op to have a setback requirement as a technical connection or operating specification, what is a reasonable formula for the setback requirement?
 - c. If the Co-op's formula for a setback requirement is found to be reasonable, is the Co-op acting in a discriminatory fashion in its application of the requirement to Minnesota Windpower as a wind generated qualifying facility?
2. Complainant's motion to supplement the record is denied without prejudice to Complainant's future submission of the six photographs along with affidavits.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)